

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

BENEDICT O. ATAKPU,)	
)	
Plaintiff,)	
)	
v.)	No. 05-1198-CV-W-DW
)	
THE SCHOOL DISTRICT OF)	
KANSAS CITY, MISSOURI,)	
)	
Defendant.)	

ORDER

Defendant, the School District of Kansas City, Missouri, moves the Court to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiff failed to respond to Defendant's motion. For the following reasons, the motion is granted.

In considering a Rule 12(b)(6) motion to dismiss, the Court must accept the factual allegations contained in the complaint as true and construe them in the light most favorable to the Plaintiff. Botz v. Omni Air Int'l, 286 F.3d 488, 489 (8th Cir. 2002). A court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint. Knapp v. Hanson, 183 F.3d 786, 788 (8th Cir. 1999). Here, Defendant argues that dismissal is warranted because Plaintiff's suit is untimely.

Under Title VII, an aggrieved person must first file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). If the EEOC dismisses the claim, it must notify the aggrieved person of their right to sue in federal court and "within ninety days after the giving of

such notice a civil action may be brought against the respondent named in the charge by the person claiming to be aggrieved.” 42 U.S.C. § 2000e-5(f)(1). Claims not brought within the ninety days are barred. Williams v. Thompson Corp., 383 F.3d 789, 790-91 (8th Cir. 2004).

Here, Plaintiff submitted a charge to the EEOC on July 29, 2004. The EEOC issued a Dismissal and Notice of Rights on August 22, 2005 and Plaintiff admits that he received this letter on August 25, 2005. Plaintiff’s first filing in this action was a Motion for Leave to Proceed *in forma pauperis*, filed November 29, 2005, **ninety-six** days after receiving the right-to-sue letter.

As Plaintiff has failed to bring this action in a timely manner, the Court GRANTS Defendant’s motion to dismiss. Plaintiff’s Complaint is hereby dismissed with prejudice. This action is closed.

IT IS SO ORDERED.

Date: August 28, 2006

/s/ DEAN WHIPPLE
Dean Whipple
United States District Court